

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

MARK A. SIMON, ET AL

CIVIL ACTION NO. 10-338

VERSUS

JUDGE MELANCON

ERIE INSURANCE CO., ET AL

MAGISTRATE JUDGE HANNA

ORDER REQUIRING SUBMISSION ON JURISDICTIONAL AMOUNT

This case was removed from state district court based on defendants' allegation that this court has diversity jurisdiction under 28 U.S.C. §1332. Defendants' allegation as to the amount in controversy is unsupported by specific facts, as defendants merely allege plaintiffs' counsel represented plaintiff Mark Simon is a surgical candidate.

A removing defendant must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000 by either (1) demonstrating that it is facially apparent that the claims are likely above \$75,000 or (2) setting forth the specific facts in controversy that support a finding of the jurisdictional amount. *Simon v. WalMart Stores*, 193 F.3d 848 (5th Cir. 1999); *Lockett v. Delta Airlines, Inc.*, 171 F.3d 295 (5th Cir. 1999).

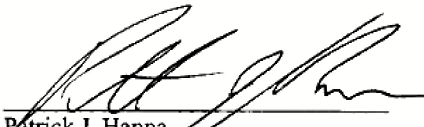
In accordance with state law,¹ plaintiff has not specified the numerical value of his damage claims, and the jurisdictional amount is not otherwise "facially apparent" from the complaint. Furthermore, defendant has failed to set forth sufficient specific facts to establish jurisdiction.

IT IS THEREFORE ORDERED that or on before **September 3, 2010**, defendants

¹La. C.C. P. art. 893.

shall file a memorandum setting forth specific facts in controversy, which support a finding that the jurisdictional amount exists and citing applicable case law involving similar facts and which reflect verdicts in an amount of \$75,000.00 or more. Supporting documentation, such as the value of the claim at issue, and an affidavit from defense counsel setting forth the value, and the underlying facts, are advisable.² *Simon* and *Luckett*, *supra*, establish that a showing of jurisdictional amount is properly made by affidavit.

Signed this 20th day of August, at Lafayette, Louisiana.



Patrick J. Hanna
United States Magistrate Judge
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Lafayette, Louisiana 70501
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²Relevant jurisdictional facts which should have been included in the Notice of Removal include the following: (1) plaintiff's wage basis during employment; (2) an itemization of plaintiff's damages, including a description of the nature and severity of plaintiff's physical or emotional injuries; (3) dollar amount of medicals which plaintiff will probably incur in the future based upon any current medical diagnosis; (4) lost wages incurred to date; (5) lost wages which plaintiff will probably incur in the future based upon the current medical diagnosis; (6) the amount of property damages; (7) the basis for any claim for attorney's fees, and the amount thereof; and (8) citations to case law involving similar facts which reflect verdicts in the amount of \$75,000.00 or more.